

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

COURTNEY ADESUNBO

Claimant

VS.

YORK UPG WICHITA

Respondent

AND

INSURANCE COMPANY

STATE OF PENNSYLVANIA

Insurance Carrier

[illegible]

Docket No. 1,000,056

ORDER

Respondent and its insurance carrier appealed the July 15, 2003 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

This is a claim for a March 23, 2001 accident and the resulting chemical burn. Claimant requested the July 15, 2003 preliminary hearing to request an order for additional authorized medical treatment. In the July 15, 2003 preliminary hearing Order, Judge Frobish authorized Dr. Pedro Murati to provide that treatment.

Respondent and its insurance carrier contend Judge Frobish erred. They argue the Judge exceeded his jurisdiction and authority by authorizing Dr. Murati to provide medical treatment. That is the only issue on this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes that this appeal should be dismissed as it fails to raise an issue over which the Board has jurisdiction to review from a preliminary hearing order.

This is an appeal from a preliminary hearing order. Consequently, not every alleged error is subject to review. The Workers Compensation Act gives this Board specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

And the term “certain defenses” refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.¹

Moreover, the Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.²

The issues of whether a worker needs ongoing medical treatment or whether the employer is failing to provide appropriate medical treatment are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those are factual issues, however, over which an administrative law judge has the authority and jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

The Board disagrees with respondent and its insurance carrier’s argument that the Judge erred and exceeded his jurisdiction by appointing a specific doctor to treat claimant. Under K.S.A. 44-534a, an administrative law judge has the authority to order medical treatment, which includes the authority to appoint, when necessary, a specific doctor to provide appropriate medical treatment. Accordingly, at this stage of the claim, the Board lacks the jurisdiction to review whether the Judge erred in appointing Dr. Murati to treat claimant.

¹ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

² K.S.A. 2002 Supp. 44-551(b)(2)(A).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁴

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

Dated this ____ day of September 2003.

BOARD MEMBER

c: Charles W. Hess, Attorney for Claimant
Gary K. Albin, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ K.S.A. 44-534a.